IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Revn. No.252 of 2007
Date of Decision : February 22, 2007.

Mahavir and another ..... Petitioners

Vs.

State of Haryana and another ..... Respondents

Coram : Hon'ble Mr.Justice Mahesh Grover

* * *

Present : Mr.S.K.Verma Jind, Advocate
for the petitioners.

Mr.S.K.Hooda, Senior DAG, Haryana.

* * *

MAHESH GROVER, J. :

The petitioners have impugned the order dated 15.11.2006, passed by the Special Judge, Rohtak. A complaint was filed by respondent no.2 against the present petitioners under the provisions of Sections 3(i) (iv) and 3(i) (v) of the SC and ST Prevention of Atrocities Act, 1989, pursuant to which they were summoned and thereafter the matter was committed to the Special Judge, Rohtak who is since trying the matter.

During the course of proceedings, an application was moved under Section 311 of the Cr.P.C. for summoning a few witnesses in order to prove the documents which are already on file i.e. Copy of Jamabandi and Khasra Girdawari besides other evidence.

The prayer was opposed on the ground that being a complaint case, the list of witnesses had to be given at the very outset as a measure of compliance of Section 204 of the Cr.P.C. That having not been done, the trial court could not have issued the process and the complaint should have

been dismissed on this score alone.

The trial court did not accept the prayer of the petitioners and allowed the application under Section 311 of the Cr.P.C. as it had found that the summoning of the witnesses was necessary for the proper decision of the case.

In the instant petition, the objection raised before the trial court has been reiterated. Learned counsel for the petitioners contends that the names of two witnesses had been given along with the complaint. But since the names of the other witnesses which have been mentioned in the application, were not given earlier, the court, at the time of issuing the process of summons, should have taken recourse to the provisions of Section 204 and dismiss the complaint. Besides, the power under Section 311 of the Cr.P.C. could not have been exercised to fill up the lacunae in the case of of the complainant.

I have heard learned counsel for the petitioners.

Section 204 (1) and (2) of the Cr.P.C. are reproduced as hereunder :-

> ***"204. <u>Issue of Process</u>***
>
> ***(1)*** *If the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -*
>
> *(a) a summons-case, he shall issue his summons for the attendance of the accused, or*
>
> *(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summon, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other*

Magistrate having jurisdiction.

(2) *No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed."*

A perusal of the above shows that if a Magistrate formulates this opinion that there is sufficient ground to proceed against the accused persons on a complaint having been filed before it, then after determining whether it is a summons case, he shall issue summons for the attendance of the accused, and in case it is a warrants case, he may issue requisite warrants.

No summons or warrants are to be issued by the Magistrate unless the list of prosecution witnesses has been filed.

Concededly, according to the case of the petitioners, list of few witnesses had been filed along with the complaint. The Magistrate, after finding prima facie that a ground for proceeding against the petitioners (who were arrayed as the accused persons in the complaint), is made out, proceeded to issue the process. No violation of Section 204 of the Cr.P.C. was shown to have been made by the Magistrate.

After the issuance of the process, and during the course of the trial, if the Court came to a conclusion that certain witnesses were required for the proper adjudication of the matter, then recourse to Section 311 of the Cr.P.C., which is of a very wide amplitude; vesting the trial court with vast discretionary powers to summon and secure the attendance and recalling of any of the witnesses, if it is necessary for the proper adjudication of the matter; was perfectly justified. No ambiguity has been shown to have been made by the trial court.

Reliance in this regard was placed on two judgments reported as ***2005 (1) RCR (Criminal) 572*** and ***1991 (3) RCR (Criminal) 182***.

There is absolutely no ambiguity in the proposition of law and

the observations made in the aforesaid judgments. The petitioners have, however, failed to show as to how this amounts to filling up the lacunae in the case of the complainant.

For the reasons aforesaid, the present petition is devoid of any merit, and is dismissed as such.

February 09, 2007 **(MAHESH GROVER)**
monika **JUDGE**